

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On Its Own Motion)	
)	14-NOI-01
Notice of Inquiry regarding retail)	
electric market issues)	

INITIAL COMMENTS OF THE ILLINOIS COMPETITIVE ENERGY ASSOCIATION

The Illinois Competitive Energy Association (“ICEA”) appreciates the opportunity to provide comments to the Illinois Commerce Commission (“ICC” or “Commission”) regarding the above-referenced Notice of Inquiry (“NOI”) that has been initiated by the Commission regarding retail electric market issues.

I. Introduction

ICEA is an Illinois-based trade association organized to represent the interests of competitive energy suppliers, including licensed Alternative Retail Electric Suppliers (“ARES” or “RES”), in preserving and enhancing opportunities for customer choice and competition in the electric and natural gas industries in Illinois. ICEA’s members are some of the most active and largest competitive energy suppliers both in Illinois and nationally, and include ARES that serve residential, municipal aggregation communities, commercial, industrial and public sector customers.¹

The Commission initiated this NOI to investigate, among other things, disclosure issues related to variable rate products and fixed price products as well as the marketing of green or renewable products. (NOI at 1). ICEA is pleased to provide comments in this NOI in order to further develop the residential retail market. Ensuring that appropriate disclosure and marketing

¹ Each member of ICEA expressly reserves the right to present its own individual position during the course of this inquiry. ICEA members include: Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Homefield Energy, Inc.; MC Squared Energy Services, LLC; NextEra Energy Services, Nordic Energy Services, Inc; and Verde Energy USA.

requirements are in place and enforced is essential to a well-functioning retail market. In this regard, ICEA believes that Illinois has already established sufficient rules and regulations and statutory obligations to protect consumers and guide ARES' marketing and disclosure practices. While ICEA supports establishing product category definitions as set forth below, adding additional disclosure requirements to the existing regulatory framework is redundant to other obligations that are already in effect. A brief summary of existing disclosure requirements confirms this view.

1. Part 412. Part 412 already includes requirements for marketing practices, minimum terms and conditions, product descriptions and contract terms. (83 Ill. Admin Code § 412) Under the guidance of the Staff, parties worked for over three years to develop appropriate rules that resulted in a Commission order adopted on December 5, 2012.
2. Section 2EE of the Consumer Fraud and Deceptive Business Practices Act (CFDBPA): The CFDBPA outlines obligations whereby an ARES must adhere to specific sales practices. (815 ILCS 505/2EE). For example, when obtaining a letter of agency, the ARES must explain the terms, conditions and nature of the service using "clear and unambiguous language." 815 ILCS 5005/2EE(a)(5).
3. Section 115A of the Public Utilities Act. Section 115A outlines specific obligations of an ARES. One such provision is the requirement that ARES marketing materials "must adequately disclose the prices, terms and conditions" of the product or service being offered to the customer using plain language. In addition, the Commission must review the ARES documentation that "substantiates any claims" made by the ARES with respect to technology and fuel types. (220 ILCS 5/16-115A(e).)

ICEA respectfully suggests that if there are issues associated with visibility into a particular supplier's variable rate and fixed rate products, or with a particular supplier's marketing of renewable products, given the numerous disclosure and marketing obligations already imposed on the supplier community, additional obligations may not be the answer. Instead, the answer may be found in broader product category definitions, stepped up enforcement, educational initiatives, and utility operational changes.

For example, it seems to ICEA that many of the complaints resulting from the recent polar vortex were due to the fact that customers could not quickly leave their supplier and therefore were subject to high prices for multiple months due to extended switching periods. ICEA recommends that the Commission develop an aggressive approach that includes allowing consumers to make mid-billing cycle switches to their selection of supplier and educating consumers as to the products currently available in the marketplace and the tools available to consumers to make an informed decision as to which product best fits their needs. Some of these educational tools include Plug-In Illinois and a better understanding of the terms and conditions of the products in the marketplace. Of equal importance, is Commission enforcement against suppliers who ignore the rules and regulations expected of them as a condition of providing service in Illinois. ICEA's members understand that one bad supplier has the ability to tarnish the reputation of all suppliers. To the extent that a supplier is found to be violating the rules and regulations, the Commission has many enforcement mechanisms to address the problem including financial penalties and revocation of an ARES certificate.

ICEA's responses to the questions outlined in the NOI are set out below.

II. Product Definitions

Of all of the issues addressed in the NOI, the need to establish product definitions is perhaps the most critical, as absent a common set of definitions from which to start, the parties involved are likely to have substantial challenges achieving consensus as to next steps..

ICEA recognizes the value of agreed-upon industry standard definitions. In the area of products and services in particular, it is critical for the Commission to avoid the temptation to place an overly prescriptive definition into a static rule. To do so, risks the very real and unintended consequence of proscribing the future development of innovative products which do not conform to the product types envisioned and defined when the rule was drafted. Therefore, any definitions or regulatory scheme employed by the Commission to address the issues raised in this proceeding should be broad and flexible enough to address future products and innovations.

Like most industries, energy is undergoing a transformation brought about by new technologies and cultural paradigms. If Illinois is to continue to foster an environment in which consumers are able to take full advantage of future industry innovation, any changes to the current regulatory framework should ensure and clearly convey that suppliers retain the ability to develop new and different products than those defined by Commission rule. The exercise of defining certain products should be expressly for the purposes of customer education and for the development of product-specific rules if deemed necessary and appropriate to further protect consumers. In no event should product definitions limit the acceptable universe of energy service offerings.

ICEA believes that there is value in defining broad categories of product types and in developing specific requirements appropriate to each of those product categories in order to help foster a well- functioning marketplace. However, the categories should be broad enough to allow for the future introduction by suppliers of new types of products and services.. If an

innovative new product becomes popular with consumers and a need arises which warrants formal definition, ICEA would support amending the list of defined products to reflect that state of affairs. However, ICEA does not believe that it is necessary or even prudent to endeavor to have ICC-approved definitions for each individual product or service offering at all times nor is it prudent given the unknown numbers and types of products to come in the future.

With regard to the NOI in particular, there are several questions contained therein which would benefit from the clarity provided by defining standard products. To that end, ICEA would first like to make recommendations with regard to product definitions and subsequently address the remaining questions in the NOI in order.

III. Recommended Product Definitions

Fixed Price Product

ICEA believes that a Fixed Price product's fundamental value to consumers lies in the cost certainty and price protection it provides over a verified and specific period of time. Accordingly, ICEA sees products for fixed periods of less than three months to be more closely related to variable given the price is likely to change frequently. Therefore, ICEA would support a requirement that establishes a minimum period during which the price does not change for a product to use the term fixed. In order for a product to qualify for the "Fixed" label, it ought to have a term of at a minimum three months. ICEA feels the three month minimum allows for products that are variable to continue to exist but not fall under the consumer protections requirements for fixed products but rather under variable product requirements.

Further, ICEA believes that for residential and small commercial customers, a Fixed Price should be fixed irrespective of any material wholesale market price spikes (such as those experienced in last Winter's Polar Vortex event) and which do not constitute change in law or

regulatory change events, or cost components outside of a supplier's control not previously disclosed at the time of sale. ICEA believes that if a supplier enters into an agreement with a residential or small commercial customer to provide electricity at x.xx cents/kWh for a defined term, wholesale price spikes during that term do not constitute sufficient cause for a change in that unit price as those are not a legal, regulatory or unknown market change or condition that could not be managed with proper procurement strategies.

There are, however, other price components that are beyond the control of suppliers which can have a material impact on the cost of supply. As Fixed Price products' terms lengthen, the risk of such changes that are beyond the control of suppliers – such as the recent PJM capacity performance proposal or potential changes in law such as renewable portfolio standards– increase. ICEA believes that given the unknowable nature of such changes, incorporating provisions in Fixed Price contracts to allow for adjustment of a Fixed Price to reflect them if and when they are imposed is proper and does not constitute a breach of the promise of cost certainty and price protection inherent in a Fixed Price contract. As such, invoking such change in law provisions, or having such provisions in a customer's terms and conditions, ought not disqualify a product from being defined as a Fixed Price product. .

Accordingly, ICEA proposes the following definition for Fixed Price product:

“A product where other than for a legal, regulatory, utility or non-market based change the price does not change and remains fixed for a minimum of 3 months.”

Variable Non-Index Product

The most common type of Variable product for Mass Market customers is the managed Month-to-Month product, wherein a supplier sets the price charged to customers based upon their hedging and margin strategies each month– a price that will not change in the course of the month.

Other variable products include multi-month variable where a price changes regularly based on market conditions that are managed similarly to the month-to-month but the price changes do not occur every single month.

Given the fact that the unit cost is set and not reflective of index for the entirety of the month or quarter or some other length of time less than 3 months, there are those who would argue that the product is more properly understood as a “Fixed Monthly” or “Fixed Period” product. ICEA acknowledges the logic in so arguing, but believes that in the interest of defining categories of products for purposes of residential and small commercial consumer education and disclosures such designation would be counterproductive and only serve to confuse.

It is important to recognize that one of the reasons for differentiating between Variable Non-Index and Index products, though, is precisely the protection that Variable Non-Index products provide from intra-month price swings. While suppliers are sometimes challenged to ascertain the best hedging strategy in months with extreme price swings, consumers on these products are not completely exposed to wholesale commodity costs, as they would be on an offer directly tied to an index.

ICEA proposes the following definition of Variable Non-Index Product:

A product that changes more frequently than every 3- months other than for legal, regulatory, utility or non-market based changes and which price is not formulaically tied directly to an index.

Index Product

Often conflated with managed variable products in discussions around energy products, Index products are actually quite distinct from Variable Non-Index discussed above – and are (outside of Time-of- Use products discussed below) more often applied to Commercial and Industrial classes of customers than for Mass Markets customers. For this reason, to the extent any protections or rules are deemed necessary and appropriate for Index products, such

protections or rules should be clearly only applicable to residential and small commercial as it is critical that Commercial and Industrial classes remain free to negotiate index products without restrictions on their businesses.

The value of an index lies in its transparency; but active monitoring of price changes is central to an Index product. This active monitoring may be beyond the skills and/or tools of residential and small commercial customers without more detailed information. Accordingly, any product tied to an index that is marketed to residential and small commercial customer should not only provide clear disclosure of a formula to allow the customer to calculate the rate they are being charged but also disclose how the customer may monitor or receive information to review the associated index.

ICEA proposes the following definition for Index Product:

A product in which the price changes more frequently than every 3 months other than for legal, regulatory, utility or non-market based changes and the price changes are wholly in and formulaic direct correlation to an index.

Time of Use Products

ICEA believes time of use (TOU) products fall into a gray area between variable and fixed products and therefore should have their own category. A time of use product could refer to a product where the price changes hourly and is tied to an index of hourly market prices setting it firmly within the definition of an index product. However, a time of use product could also offer fixed prices for set periods of the day but the price changes based on when the power is used. For example a TOU offer could set a fixed price of 4 cents/kWh for power used from 8 a.m.-4 p.m. and 2 cents/kWh for power used from 4p.m. – 12 a.m. over the course of 1 – 2 years. These are fixed prices for these set time periods however the price does change throughout the course of the day. Further a supplier could offer hourly price changes which are not tied to an index.

To prevent a time of use product from being incorrectly pigeon holed into a traditional fixed or variable option ICEA proposes the following definition:

Time of Use Product - A product in which pricing changes based on a specified period of time energy is consumed; includes but is not limited to: real-time or hourly pricing, critical peak pricing, on-peak and off-peak pricing

IV. ICEA's Response to NOI Questions

The following are ICEA's responses to the specific NOI questions. The responses are based on the definitions provided above.

The NOI outlines seven topics for comments as follows: Variable Rate Offers; Renewable or "Green" Energy Offers; Defining Fixed and Variable Rates; Price-To-Compare; Consumer Education; and Cancellation/Rescission.

A. Variable Rate Offers

The NOI raises seven questions regarding Variable Rate Offers and are summarized below:

- What type of disclosure requirements do you believe are necessary for variable rate offers to ensure consumers understand that the rate fluctuates?
- Should the Commission:
 - Adopt a requirement that the supplier provide the customer with a formula or method by which the variable rate is determined?
 - Adopt a requirement that a residential variable rate has to be tied to a publicly available index/benchmark?
 - Adopt additional notice requirements for variable rate changes?
 - Require suppliers to set and disclose a maximum rate for each residential variable rate offer?
 - Determine that sales of variable rate offers be prohibited from implying future savings unless the basis for such implied savings is provided?

- Require suppliers to provide its customers with readily available access to rates, including historical rates and current rates, as well as imminent changes to the rates?

ICEA will respond to each question below

- **What type of disclosure requirements do you believe are necessary for variable rate offers to ensure consumers understand that the rate fluctuates?**

ICEA believes that for both Variable Non-Index and Index products, it is important that there be appropriate product disclosure for the product offered. ICEA further believes that existing requirements applicable to the contract/separate disclosure already serves as a mechanism for such transparency, requiring clear and concise summaries of the terms and conditions of an offer.

- **Should the Commission adopt a requirement that the supplier provide the customer with a formula or method by which the variable rate is determined?**

ICEA believes this is both an appropriate and necessary requirement for residential and small commercial customers on Index products. For managed Variable Non-Index products, however, suppliers use proprietary hedging and margin strategies that decidedly fall under the rubric of trade secrets. Requiring that particular strategy information be made publically available would represent excessive regulatory overreach and could force some suppliers to reconsider their continued participation in a market that requires them to reveal such sensitive information to their competitors. The prices should be available to the customer for Variable Non-Index products rather than the formula or strategy to allow the customer the ability to know their price for the upcoming month. In addition to knowing their price for the upcoming month, ICEA again points out that it is also beneficial to accelerate switching times to give customers time to leave a price.

- **Should the Commission adopt a requirement that a residential variable rate has to be tied to a publicly available index/benchmark?**

This question is emblematic of the necessity of differentiating between the various types of variable products. As constructed, the answer to this question must be an emphatic “no”, unless the Commission were to decide that only Index products count as variable.

It is important to recognize how the market is currently functioning when considering substantive and procedural options for improvements. The fact of the matter is that the vast majority of customers who are on “variable” rates are actually on managed monthly products not tied to an index. Absent an explicit recognition that this requirement would be limited to the particular subset of variable products represented by Index products, adoption of a rule requiring that the variable rate be tied to a publicly available benchmark or index would be chilling to the retail market.

We noted earlier that Index products are less popular for a mass markets customer than they are for more sophisticated commercial or industrial customers as they can be more complex. Another important point with regard to managed Variable Non-Index products is that they provide suppliers with the flexibility to control the cost of commodity to their customers – something that they are incapable of doing on an Index product.

The importance of this cannot be understated. During last winter’s Polar Vortex, customers on a Fixed Price product were unaffected, as their unit price had been agreed to and locked in before the prices spiked. Conversely, customers on an Index product were completely exposed to the severe price spikes, as the unit price they were charged was tied to wholesale market indexes and their unit cost reflected whatever those markets’ clearing prices were at the time of consumption. Customers on managed Variable Non-Index products fell somewhere in between these two extremes. While there were certainly instances of suppliers who sought to

pass on the entirety of the increase in commodity costs to their monthly customers, there were equal if not more instances of suppliers making the decision to share the pain of those increases by decreasing – in some cases dramatically (and in some of those to the point of taking negative margins) – in order to protect their customers from doubling, tripling or worse of their unit cost prices.

ICEA believes that by identifying and acknowledging the fundamental difference between an Index and a Non-Index product, the Commission will be in a better position to develop rules which fine-tune an already-functioning marketplace, hence the recommendation that the Commission adopt definitions for standard product types. Had the Commission instead adopted requirements for index products that forced customers to be tied to an index for purposes of variable pricing last winter would have forced all customers to receive the high market prices and would have handcuffed those suppliers who did not pass on the market increases.

- **Should the Commission adopt additional notice requirements for variable rate changes?**

ICEA is largely supportive of measures that allow customers to make informed decisions relating to an existing Variable Non-Index contract, and believes that these customers should be provided with sufficient advance notice of changes to their Variable Non-Index product rates. ICEA supports such measures with three important caveats:

First, the provision of these rates is appropriate only for those customers who are currently under contract and being served on a Variable Non-Index product where the new rate is known by the supplier in advance of the change. Some ICEA members who offer such products are working to make the information available on current customers' "My Account" page

another form of web access only available to the customer. These advance rates should not be available for general public – and competitor – consumption.

Second, to the extent that the Commission deems noticing requirements necessary, it should take into account applicable customer switching rules and endeavor to adopt timeframes that allow the customer to make an informed decision regarding the new rate. Further, one of the endemic deficiencies of the energy industry is the lack of standardization across markets; and to the extent possible, ICEA urges the Commission, and all regulatory bodies in Choice markets, to work toward the goal of national standards.

Finally, there should be no requirements placed upon suppliers that variable pricing updates be provided in any form other than electronically on the Web and available through suppliers' customer service call centers. Initial proposals in Pennsylvania, for USPS first class mailings were shelved after extensive comment. Such requirements were correctly critiqued as being cost prohibitive and overly onerous. Web and phone should suffice for all Illinois consumers, and requirements beyond that will only serve to drive up the cost of serving customers in the state. These costs that are likely to be passed on to consumers.

It is important to again point out that the above only applies to Variable Non-Index products, further supporting the importance of differentiating between Index and Variable Non-Index product offerings. It is, of course, impossible to fulfill any advance notice requirement for a product whose unit cost is tied to an Index, as a supplier must first wait to see what the Index clears at and in the case of certain Index or Time of Use products the amount of each customer's usage during each defined interval over the course of the month.

- **Should the Commission require suppliers to set and disclose a maximum rate for each residential variable rate offer?**

ICEA believes that such a requirement would be inappropriate and would artificially distort the competitive retail market. For Index products, it is a logical impossibility to set such a maximum, as the price is tied to whatever the marketplace sets as the wholesale price. For Variable Non-Index products, trying to establish a maximum rate would represent regulatory overreach and could amount to a mandate that suppliers lose money on every kWh they deliver should the wholesale market increase substantially. If customers value price certainty, there are Fixed Price product offers of varying term lengths available to them.

- **Should sales of variable rate offers be prohibited from implying future savings unless the basis for such implied savings is provided?**

The question posed would be simply resolved through a requirement that if savings claims are made the supplier is obligated to provide the savings. If the promised savings do not come to fruition a supplier should be obligated to provide the claimed savings amount through refund or some other compensation. While one product may offer savings as a percent off default supply another may offer a set refund at the end of a term if a minimum savings amount is not achieved. Ultimately, the consumer protection should be the same. If a savings claim is made the supplier must honor the claim without regard to product type or market conditions.

- **Should the Commission require suppliers to provide its customers with readily available access to rates, including historical rates and current rates, as well as imminent changes to the rates?**

ICEA believes that the overriding goal of any requirements around rates should focus on providing relevant, actionable intelligence to consumers and that potentially misleading information should be avoided at all costs.

As with the advance noticing requirements mentioned above, several jurisdictions have proposed or enacted requirements that suppliers make historical pricing information available to

their customers or to consumers in general. In ICEA's opinion, such requirements are of limited value to the residents of those states. In fact, the rate information provided to consumers under such requirements has no relevance on current product offerings or market conditions. To the contrary, that information could misleading consumers into believing that past lower priced product offers will lead to similar prices in spite of increases in wholesale costs.

ICEA believes that there is value in providing current customers on Variable Non-Index rates the upcoming month's rate in a timely and accessible fashion. ICEA further acknowledges that a recent history of historical Variable Non-Index rates is of some limited value to Variable – Non-Index customers who may not have been actively monitoring their unit costs (although they will in most cases have access to previous bills electronically or at the request of their supplier). Such information could also provide prospective customers with an idea of how that product is has been managed historically.

It is crucial, though, that any reporting of historical rates be placed in the proper context. This is most striking with regard to historical Fixed Price rates. Fixed Price offers vary based on the season, underlying market conditions and any PPAs or other supply arrangements the RES has made with wholesale counterparties, as well as potential special offers to particular segments of customers such as aggregations, associations, or other limited-time offers. In the Illinois market, there are suppliers who individually price residential and small commercial customer contracts based on the daily changing energy market and historical customer usage information. As such, there may not be a single historical Fixed Price rate offer for a given supplier in any given month. Further, the difficulty of using any method to derive an average historical rate that is charged to customers is compounded by other factors such as when the customer first received power. Consider a situation in which RES A conducts a marketing campaign in March of a

given year and signs up a substantial number of customers at eight (8) cents/kWh and RES B does so in July and acquires an equally substantial number of customers at 10 cents/kWh. Further assume that *both* RES' prices were eight (8) cents/kWh in March and 10 cents/kWh in July. If based on an "average" historical rate charged, RES A appears to be less expensive/more consumer friendly in its pricing than RES B, when in fact their offers for each month are identical. Moreover, regardless of whether looking at historical offered rates, or actual rates charged, the past is not necessarily indicative of the future. ICEA questions whether a potential customer considering options in October would find any use in historic information that indicates what price a prior customer could have paid seven months ago. In fact, posting historical rate offers or "average" rates may falsely suggest a pricing trend on which the customer bases a decision to either contract now or wait to contract in the future, to the customer's detriment.

The Michigan PSC recently ruled on the results of a series of collaboratives conducted by the Department of Licensing and Regulatory Affairs with suppliers and utilities around the development of a new shopping website for Natural Gas Choice customers. The Commission concurred with Staff's proposal that rather than all suppliers' historical rates being compiled and displayed on the website, they instead employ the same sort of snapshot view as utilized on Ohio's Apples-to-Apples website (upon which Michigan's site was loosely based). This decision was consistent with the suppliers' argument in the collaboratives that it is current and forward pricing information that is most relevant to consumers who are making decisions today about future energy consumption.

In summary, past performance is not an indicator of future results. Consumers who are making decisions today need information that is of today, not what happened 6 or 12 or 36 months ago. The Commission should focus its efforts on identifying the information that is

relevant to residents and facilitate its provision to them, not enact ill-informed rules which only serve to confuse or overwhelm.

B. Renewable or “Green” Energy Offers

The NOI raises two questions regarding Renewable or “Green” Energy Offers as outlined below:

- Should the Commission define residential marketing terms such as “green” and “renewable” offers?
- Should a “% renewable” column be added to the supplier offer matrix found on PlugInIllinois.org? If so, is the addition of such a column dependent on a Commission definition of “renewable energy”?

ICEA believes that 412.190, when used with 16-115A(e) are sufficient obligations with respect to the marketing of green or renewable offers and no further definitions are necessary.

The term “renewable” can represent a continuum, from the purchase of RECs in any state, purchase of locally sourced RECs or RECs from new build sources, all the way to PPAs for energy from RES owned individual facilities. Similarly, ICEA recognizes that “green” can include a renewable component, but also can hit on any number of sustainability strategies from reducing all or certain fossil fuels to supporting customer efforts to obtain efficiency upgrades or distributed generation. Given this diversity, ICEA believes that the wide range of options should not be unnecessarily restricted by a narrow, and likely difficult to change, regulatory imposed definition of “green” or “renewable.”

To be clear, however, ICEA considers accurate and truthful disclosure to be a necessary component of customer choice. As a result, to the extent an NOI participant believes additional regulations are needed with regard to green marketing, ICEA would encourage that participant to identify the situation(s) where the current disclosures are inadequate to inform consumers about a particular RES offering.

Responding further, ICEA has no issue with a percentage of renewable on PlugInIllinois under a broad definition of “renewable” , allowing RES to further differentiate (and accurately describe) their individual product offerings.

C. Defining Fixed and Variable Rates

The NOI raises five questions regarding defining fixed and variable rates as summarized below:

- Should the Commission:
 - Define “fixed” and “variable” rates? If so, how should such definitions impact the supplier offer matrix on PlugInIllinois.org?
 - Determine a definition of “Fixed” and “variable” rates?
 - Adopt additional customer disclosure requirements for “fixed” offers that contain change-of-law contract clauses?
 - Adopt additional customer disclosure requirements for “fixed” offers that contain change-of-supplier-cost contract clauses?

With regard to adopting additional customer disclosure requirements for “fixed” offers that contain other non-fixed rate components, as previously stated, there is no need for additional disclosure requirements given the depth and breadth of Part 412, Section 2EE of the Consumer Fraud Act and 115A of the PUA. Any of the details about a fixed or variable rate should use the definitions recommended by ICEA above to ensure broad categories of products and to avoid hampering future products, including:

- whether it is a dynamic rate for a smart meter customer that changes hourly or a rate that changes monthly,
- how the rate is calculated and change of supplier cost contract clauses
- any non-fixed components of a fixed price product (eg. legal, regulatory, utility or other non-market hedgeable costs).

(See 83 Ill. Admin. Code § 412.110.) ICEA believes, the requirements for what has been identified as the Uniform Disclosure Statement are sufficient disclosures when combined with our proposed product definitions. These include:

- (d) The charges for the service for the length of the contract and, if any charges are variable during the term of the contract, an explanation of how the variable charges are determined

- (e) The length of the contract, including any possible automatic renewal clause

...

- (p) A price per kilowatt hour (kWh) for the power and energy service. If a product is being offered at a fixed monthly charge that does not change with the customer's usage and the fixed monthly charge does not include delivery service charges, the RES must provide a statement to the customer that the fixed monthly charge is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore, the fixed monthly charge is not the total monthly amount for electric service. For any product that includes a fixed monthly charge that does not change with the customer's usage and the fixed monthly charge does not include delivery service charges, the RES must provide an estimated price per kWh for the power and energy service using sample monthly usage levels of 500, 1000 and 1,500 kWh.

(83 Ill. Admin. Code § 412.110(d)-(e) and (p).)

If the contract continues to be in effect after a three month (or more) fixed fee or fixed rate term—including through automatic renewal—then these subsections appear to require an explanation of the automatic renewal term. (See also 83 Ill. Admin. Code § 412.240(b) (explaining requirements for automatic renewal term).) Also, though there are additional disclosures in subsection (q) for fixed rate or fixed price products, a RES must include “the charges for the service . . . [and] an explanation of how the variable charges are determined” without regard to where on the continuum between fully fixed and fully variable a product may be. This explanation can be provided based on product type as defined here by ICEA.

ICEA further notes that the Consumer Fraud and Deceptive Business Practices Act (“Consumer Fraud Act”) requires:

The terms, conditions, and nature of the service to be provided to the subscriber must be clearly and conspicuously disclosed, in writing, and an electric service provider must directly establish the rates for the service contracted for by the subscriber

(815 ILCS 505/2EE(a)(5)(iii) (describing “letter of agency” content); *see also* 220 ILCS 5/16-115A(b) (incorporating the requirements of Section 2EE of the Consumer Fraud Act by reference).)

Section 115A of the Public Utilities Act provides further requirements for RES disclosure of price (and other) terms in both marketing materials and as part of customer sign-up. (*See* 220 ILCS 5/16-115A(e).)

As previously stated, rather than attempting to place additional obligations on the suppliers, ICEA recommends that the ICC help better educate consumers as to the types of products available in the market and open a working group to implement accelerated switch options for customers. At the same time, if there is a supplier that is not following existing Illinois statutes and regulations—e.g. using contracts having no explanation to the customer when the variable rate will increase or having certain contract provisions that allow an additional rate to the customer's bill that wasn't part of the customer's fixed contract and, thus, the customer did not know or understand, the Commission must act quickly and decisively. The Commission has clear enforcement authority to file a complaint against that supplier to determine whether that supplier complied with the rules, and if not, whether that supplier should enter into a corrective action plan or whether the supplier's certificate should be suspended or revoked.

ICEA believes that no additional disclosure requirements for fixed offers that contain change-of law/change-of-supplier-type contract clauses are necessary at this time.

D. Price-To-Compare

The NOI raises two questions regarding the Price-To-Compare (“PTC”) as outlined below:

- Should the Commission:
 - Specify how a supplier has to portray the utility PTC? Require a uniform method of price comparison based on usage intervals?

ICEA believes it benefits consumers and the marketplace that there be a single, published price to compare (“PTC”) upon which all market participants agree and which all use uniformly. However, while a single published PTC should be used any requirements need to take into account the fact that marketing materials will post a PTC from a specific point in time and so if a PTC changes mid-campaign materials will not reflect that change but rather the PTC posted at the time of roll out.

E. Consumer Education

The NOI raises six question regarding consumer education as summarized below:

- Should there be:
 - Changes and/or supplements to the Commission’s retail electric education website, PlugInIllinois.org?
 - Additional ways to increase traffic to PlugInIlliois.org?
- Should Commission Staff:
 - Create a website and/or document with all laws and regulations relevant to retail electric suppliers in Illinois?
 - Hold periodic workshops to discuss existing rules?
- Should utilities be required to display the supplier logo on a utility-consolidated bill?
- Should suppliers be required to post their residential offers on PlugInIllinois.org?

ICEA responds in turn below.

- **Should there be:**
 - **Changes and/or supplements to the Commission’s retail electric education website, PlugInIllinois.org?**
 - **Additional ways to increase traffic to PlugInIllinois.org?**

First, to the extent that ORMD, the Commission’s Customer Service Division, or any other branch of the Commission (or third party) engages in educational outreach, ICEA recommends that they may want to focus their education outreach on early spring every year. This is because early- to mid-spring is the timeframe when most individuals and communities are making choices about their electricity options. ICEA does not recommend a particular method of outreach at this time, but suggests this early spring timeframe will allow individual customers and communities to make the best-informed decisions.

Second, although ICEA commits to working with the Commission on the content of the outreach, ICEA believes that it would be helpful to first address the various changes in utility rates, including the annual (on June 1), seasonal (summer vs non-summer), and monthly (PEA). These can be confusing to consumers; conversely, understanding these changes is important to well-informed customers.

Third, the Commission’s web site PlugInIllinois is a good resource for customers, and should receive more publicity. ICEA recommends that Ameren and ComEd consider adding periodic bill messages to check PlugInIllinois for the latest information about the bundled and competitive rates.

Additionally, many consumers may still view the utilities as “the electric company” and may fear receiving inferior or discriminatory service if they leave their utility for their electric supply and switch to a RES. RESs’ (and even the ICC’s) attempts to allay those fears can only go so far. Far more impactful are messages from Ameren and ComEd that customers who

choose a RES for their electric supply will continue to receive the same level of service and support as those who remain with the utility. ICEA recommends that Ameren and ComEd include on-bill messaging to that effect on a periodic basis.

With regard to smart-meter issues, ICEA recommends that ORMD place a more prominent link on PlugInIllinois.org for the smart grid/smart meter page. Finding the Commission's current Smart Meter webpage is difficult unless one is familiar with the link. Enhancing the visibility of the ICC's current smart meter webpage on the PlugInIlliois website will allow customers to more easily review their options. Second, ICEA recommends that ComEd and Ameren mailings include the smart meter page on PlugInIllinois.org. Although ICEA is aware that the ComEd "door hanger" does include the web address, additional mentions would be helpful in educating consumers.

ICEA cautions, however, that there can be a fine line between utility mailers pushing smart meter products generally and utility products specifically. ICEA is cognizant of the constraints of the Commission's IDC rules (even with waivers) under which utilities must operate. However, as the Commission found in ICC Docket Nos. 12-0244 and 12-0298, it is desirable for the competitive retail market for dynamic rate products to be allowed to grow. Publicizing the smart grid website and being careful about pushing utility products are positive steps.

To help better educate suppliers on their continuing obligations, ICEA recommends that the Commission website include a section that serves as a clearinghouse for all applicable statutes, rules and regulations relevant to RES service in Illinois as well as any Staff announcements (e.g. regarding updated ACP rates). This section would include information on RES applications, RPS compliance, complaints, consumer protection standards, net metering

requirements, switching information, municipal aggregation related issues and other relevant rules. As a result, this section would likely cite to, at minimum, the Consumer Fraud Act and the Illinois Power Agency Act in addition to the Public Utilities Act. ICEA further suggests that a section with key Commission orders—both those implementing rules and other key dockets (such as ICC Docket No. 13-0506)—will provide additional information and background not apparent from reading the statutes or rules alone. Finally, ICEA recommends that this section of the Commission’s website include a comprehensive list of all reporting requirements, including frequency of each filing as well as the timeframe. In light of some of the allegations in CUB and the City of Chicago’s recently filed petition (ICC Docket No. 14-0422), ICEA is troubled that there may be participants in the retail market that are not following Illinois statutes and rules. ICEA members are further concerned that certain RESs are not operating under the same rules as everyone else leading to consumer mistrust of the entire RES community. Without opining on the merits of the the allegations in the CUB/City Petition, ICEA believes that there may be certain suppliers who are insufficiently familiar with Illinois law, rules and regulations. While this is clearly the responsibility of the RES, ICEA believes having all the information available in a single place on the ICC’s website would help reduce incidences of RES as well as other parties (such as ABC’s) not knowing all of their statutory and regulatory obligations. Having such a one-stop repository of a RES’s regulatory responsibilities would be particularly helpful given the number of requirements that seem to change almost annually since the market’s inception 15 years ago.

- **Should the Commission Staff hold periodic workshops to discuss existing rules?**

ICEA supports the Commission taking an active and sustained role in the education of Retail Suppliers who wish to participate in the Illinois market and believes that periodic

workshops would be of substantial benefit to the marketplace, and therefore also to the citizens of Illinois.

ICEA suggests that the Commission adopt a process used by Pennsylvania to educate suppliers. In Pennsylvania, the Commission (more accurately, its staff) periodically hosts a day-long workshop, often coinciding with the adoption of a new statute or rule. The workshop not only covers the entirety of the new law or regulation, but also reviews the core of existing laws and regulations. The Pennsylvania Staff also encourages suppliers to ask questions about the new rule or regulation prior to the workshop so that it can be properly addressed. ICEA members who have experience in, and who are well informed about, the Pennsylvania market find these workshops to be extremely useful. ICEA urges Staff to consider holding annual workshops in Illinois that RES compliance officers and marketing representatives should attend. Perhaps workshop attendance could also be made a condition of the RESs annual certificate renewal. ICEA's membership would appreciate the opportunity to discuss ongoing and emerging compliance issues in a workshop setting, and believes that newer entrants into Illinois would see even greater benefits. In addition, ICEA believes that Illinois customers as a whole will benefit from more informed RES.

Therefore, ICEA encourages the ICC to implement mandatory annual attendance at an ORMD/ICC lead workshop to review regulatory and statutory requirements. The ICC could charge a reasonable fee to cover the costs to host and lead such a workshop and could mandate each supplier send at least one representative responsible for compliance. This would give RES the opportunity to ask questions and ensure there is no excuse for non-compliance. It would also give ICC staff the opportunity to hear what is happening in the market and address any gray areas of interpretation that may come up.

- **Should utilities be required to display the supplier logo on a utility-consolidated bill?**

Yes. In Ohio, Columbia Gas is the most recent utility to add supplier logo's to the bill. Of critical importance is that the logo must be in a similar size and position to that of the utility. The Ohio Commission recently expanded this requirement to electric utilities adding a requirement that if the utility logo is in color the supplier logo be so as well. Columbia in fact had supplier logos on the bills for years but it was in a very small size and near the supplier charges on the back of the bill. Once the logo was moved to the front top of the bill, customers began taking notice of their supplier including the fact that the utility was not the default supplier despite that having been the situation for nearly five years. Supplier logos on bills in a dual branded format with the utility are critical to ensuring customers are aware of all the companies using that bill every time they look at it and that no supplier can be accused of "hiding" or not being noticed on a bill.

ICEA believes that displaying supplier logos on a utility-consolidated bill should be a top priority. During the stakeholder review process of ComEd's revised bill format launch earlier this year ICEA inquired as to the ability to include supplier logos. In response, ICEA was told by ComEd that displaying supplier logos would be considered in the next phase of their ongoing bill format update process, but ICEA has not received any additional detail about when to expect that update. ICEA's members would all eagerly display their logo on a utility-consolidated bill as soon as such a capability is available.

- **Should suppliers be required to post their residential offers on PlugInIllinois.org?**

Similar proposals have been made in other states, sometimes adopted and at other times rejected. ICEA does not believe that suppliers should be required to post their offers on

PlugInIllinois. However, ICEA anticipates that virtually all suppliers will wish to take advantage of this PSC-sponsored and run website and the credibility it bestows.

Further, suppliers should not be mandated to place every single residential offer nor is every single residential offer appropriate for PlugInIllinois. Some residential offerings are only available to members of certain trade organizations or alumni associations or are endorsed offers targeted to a particular group. Placing all available residential offers on the website will create an overwhelming number of offers not all of which are generally available. We already see on the gas side, where this is a requirement, frustrated customers who are requesting a product they are not eligible to receive despite the website indicating the offer restrictions. The ICC should learn from the gas side and only require generally available residential offerings to be posted. If a supplier chooses to add more that is their choice. As previously stated, ICEA recommends that the Commission undertake an aggressive campaign to educate customers with respect to the tools available to make an informed purchasing decision and not overwhelm them with more offers that are not generally available. In this regard, ICEA has identified the following low- or no cost, concrete steps that it believes would provide customers with better information.

F. Cancellation/Rescission

The NOI raises two questions regarding cancellation/rescission as follows:

- Should a customer be entitled to the previous rate if she cancels the contract within a set number of days of being notified of the new rate?
- Should the Commission change the rescission period for customers with a smart meter? If so, what should the new rescission period be?

ICEA is not entirely clear on exactly what this question is proposing or seeking to address. Irrespective, the notion of providing a customer a previous rate on an ex post facto basis is contrary to how the market is currently functioning, how suppliers hedge power and the

nature of the bilateral agreements customers make with their suppliers for Fixed Price and Month-to-Month products.

If this proposal is intended to apply to a variable product, it is inappropriate in that it is asking the supplier to honor a price that it is not currently offering to any prospect or customer. The fact that the price was “x” last month is irrelevant with regard to power that is to be procured and consumed this month.

Suppliers each have their own hedging strategies that assuredly fall under the rubric of trade secrets, but notwithstanding the differences between them, at base they involve an ongoing process of managing the cost of the necessary supply for their customer base as well as their profitability. This understandably involves careful consideration of a number of variables, not least of which include: the wholesale costs of electricity, the number of customers the supplier will retain, and the expected consumption of those customers. To varying degrees, depending upon their hedging strategy, suppliers are exposed to movements in the market, which can result in either the ability to offer lower prices to their customers or the necessity of raising them.

In light of this inherent feature of our industry, suppliers will change the price offered to customers on Variable Non-Index contracts – usually on a monthly basis. When considered in that context, a requirement that a supplier offer the previous month’s price to a customer upon request is unsupportable. It either assumes that the cost of the underlying commodity did not change from the previous month (a highly unlikely prospect) or it represents an anti-competitive, perverse requirement that suppliers’ ability to realize any margin be suspended in certain circumstances (e.g., when the costs of supply exceed the previous month’s offer price, less other business expenses).

Retail electric suppliers are not regulated entities. RESs do not receive a guaranteed rate of return on investment. Attempts to dictate pricing or otherwise control pricing are antithetical to the notion of retail choice and the role of retail electric suppliers in a competitive energy market.

ICEA does not believe that this proposal is intended for a Fixed Price product, and will reserve comment unless it becomes clear that is in fact the intent. We do note, however, the inapplicability of such a requirement to a Fixed Price product is in order of magnitude greater than that outlined above for a variable product due to the length of time since the original offer price had been calculated by the supplier, and the fact that price changes from Fixed Price contracts are dealt with in the context of Renewals.

ICEA notes that changes to allow customers to switch faster from one supplier to another supplier would mitigate the impact of unwanted “rate changes” and would mitigate a variable price change before the customer is on flow. ICEA further notes that to the extent that a supplier provides a “new rate” to a customer, it must be consistent with not only the contract between the supplier and the customer but also the Uniform Disclosure Statement provided to the customer. To the extent that the “new rate” is inconsistent with either the contract or the Uniform Disclosure Statement, ICEA believes that Commission involvement is warranted. Other than that circumstance, to the extent the customer received service on a new rate, they are obligated to the supplier under that new rate.

V. One-Star Supplier Recommendation

Although not specifically in response to any of the NOI questions, ICEA wishes to comment further on strategies the Commission might consider in response to this NOI. ICEA notes that Commission established the Retail Electric Supplier Complaint Scorecard (“RES

Complaint Scorecard”) in February 2013 on the its PlugInIllinois website. The RES Complaint Scorecard shows how each RES’s complaint rate compares to the average complaint rate for the entire residential market. ICEA commends the Commission and the ORMD for maintaining this instructive, consumer education tool about each electric suppliers’ customer service record. ICEA recommends that the Commission further leverage the information it already collects through the RES Complaint Scorecard to more aggressively identify potential bad actors in the market that harm both customers and other market participants. This process would include assessing the nature of customer complaints, identifying persistent customer service problems among RES with the highest complaint rates, and taking appropriate action to improve customer service among RES with the highest complaint rate rather than imposing prescriptive measures on the entire RES community.

Through this process, ICEA believes that customers will benefit twice. First, bad actors face a decision of improving or leaving, instead of relative free reign to continue to confuse customers. Second, customers will save by the Commission not increasing regulation on good actors that follow the intent and spirit of the Commission’s existing rules. Increased regulations on good actors (that are really directed at bad actors) often leads to additional compliance costs or stifles product development, both of which impact end-use customers.

ICEA recognizes that the RES Complaint Scorecard is only one measure of a RES’s customer service, is a snap-shot in time, and may reflect incidents beyond the RES’s control, such as the Polar Vortex weather event or unforeseen wholesale market decisions by the RTOs and FERC.² ICEA believes that to the extent there are problems with retail offers in Illinois, the root cause is likely supplier-specific compliance and marketing issues rather than a failure of the

² ICEA also understands that the definition of “complaint” is broad enough to encompass customer inquiries in cases where the customer may be completely satisfied with their RES, in addition to complaints about service.

current regulatory structure. Based on that belief, ICEA recommends that the Commission's focus be directed to 1-Star rated RES's as a starting point to improving customer service and the promoting the competitive retail electric market. ICEA proposes the following high-level framework for further discussion.

ICEA proposes that the Commission – through the ORMD and Consumer Services Division (“CSD”) – identify any RES that has a consumer complaint rating of one star for a period of 6 consecutive months or more and initiate a remediation action plan that is designed to improve upon that RES's 1-Star customer complaint rating. The vehicle for a remedial action plan could be accomplished through Commission Staff workshops for 1-Star RESs, individual meetings with such rated RESs, or a Commission ordered 10-101 investigation. ICEA leaves the appropriate vehicle for a remediation plan to the Commission's discretion and authority. However, ICEA believes that whatever vehicle the Commission chooses to use should establish, at a minimum, the following information:

- 1) The nature of the complaints: Were contacts with CSD actual complaints, or were they questions? Were the complaints arising out of a single or few transactions, or do the complaints suggest systemic behavior contrary to the Public Utilities Act or Commission rules? Were the RES's actions legal (but confusing) or contrary to law?
- 2) If the nature of complaints suggest repeated or systemic non-compliance, a remediation plan, in the form of concrete goals for the RES to meet within a specified time frame. For example, a RES that faces complaints of deceptive door-to-door practices may be ordered to demonstrate formal policies and a monitoring program to ensure door-to-door salespeople (whether employees or not) are acting in compliance with applicable laws.

Should the Commission find that the RES has not substantially complied with its remediation plan, the Commission should initiate action regarding the RES's certificate and impose conditions including, but not limited to, suspension or revocation of that RES's certificate to operate in Illinois. Because the nature of the RES Complaint Scorecard means that there will likely always be 1-star RES, ICEA cautions that suspension or revocation should not be

automatic, and not used to reduce competitive retail options. Nevertheless, ICEA believes that repeated 1-Star suppliers should understand that they face potentially serious consequences for failing to follow Illinois laws and rules and improving customer service, which potentially creates a negative image of Illinois competitive retail electric market and competitive suppliers.

VI. Conclusion

ICEA appreciates the opportunity to provide these comments. The members of ICEA are active participants in the ICC proceedings and include some of the largest suppliers in the state and in the country. As such ICEA supports any efforts to help customers understand the competitive market and to allow the Illinois market to continue to grow and flourish. ICEA offers here its expertise in products and markets to provide product categories, which reflect the types of products customers are likely to be offered today and in the future. ICEA believes the existing rules when applied to these product categories will offer greater insight to customers regarding variable versus fixed price offerings.

Finally, ICEA firmly supports enforcement of not only existing rules but enforcement of engaging all retail suppliers in ORMD and Commission proceedings and education on the consumer protections to ensure no supplier is left uneducated on their obligations.

Respectfully submitted,

Illinois Competitive Energy Association

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